IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 4570 of 2005

Smt.Shamal Gajanan Chitale
and another ..Petitioners

vs.

Smt.Yamuna Vinayak Chitale
and others ..Respondents

Shri M.L.Patil for petitioners
Shri S.B.Shetye for respondent nos. 1 to 4.

CORAM: S.B.MHASE J.
25th April, 2006

P.C.

1. Heard both sides.

2. The common order dated 29th March, 2005 passed below Exh.223 and 258 in Special Civil Suit No.58 of 2002 passed by Civil Judge, Sr.Dn., Ratnagiri is challenged by this petition. Gat No.100/1, 100/3/2/100/3/3 and 100/11 situated at Chiplun District Ratnagiri have been acquired by the Land Acquisition Officer for Chiplun Municipal Council and the amount of compensation of the said land has been paid to respondent nos. 1 to 4. It appears from the orders passed in Writ Petition No.9624 of 2004 that initially the petitioners have approached to the civil court to restrain the Acquisition Officer to disburse the amount of compensation in favour of respondent nos. 1 to 4. However, the civil court rejected the said application observing that the petitioners shall approach to the Land Acquisition Officer. Accordingly, the petitioners

approached to the Land Acquisition Officer. However, the Acquisition Officer has not passed any order on that application. Therefore, the petitioners approached this Court by filing the above referred writ petition. However, during the pendency of the said writ petition, the Acquisition Officer informed to the petitioners that since the application made by the petitioners is rejected by the Civil Court, the amount has been disbursed in favour of respondent nos. 1 to 4. This Court expressed dissatisfaction in respect of the acts of the Land Acquisition Officer, however, ultimately directed the petitioners to make appropriate application to the Civil Court. Therefore, the petitioners have made an application to the Civil Court on 5th January, 2005. In view of that application on 27th January, 2005, respondent nos. 1 to 4 have filed an undertaking that the said amount will not be used personally and will be preserved intact till the final disposal of the suit. It appears that, therefore, applications at Exh.223 and 258 were made making the prayer to the Civil Judge, Sr.Dn., that respondent nos. 1 to 4 be directed to deposit the said amount in Court. These applications have been rejected on the ground that if really the petitioners are entitled to get certain amount from the compensation received, can be decided at the time of final adjudication and at this stage the application cannot be considered and rejected the said application. Since the undertaking was there and the amount is preserved by respondent nos. 1 and 4 rejection of the said application is proper. However, one

observation in the said order requires to be struck down namely the Court has observed in para 4 of the impugned order that "compensation is not the subject matter of the suit." This observation gives wrong impression about subject matter of suit and the Court has erred in making the said observation. Therefore, it is hereby struck down. Shri Shetye, learned Counsel for the respondents makes a further statement that the amount of compensation has been deposited with Nabard Bank and xerox copy of the certificate will be deposited in the Trial Court within a period of 6 weeks. To that effect the petition is allowed and disposed of accordingly.

(S.B.MHASE J.)